

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

ABC International Inc.,

Plaintiff,

v.

GD Medical Inc.,

Defendant.

Case No.:

Judge:

JURY DEMAND REQUESTED

**COMPLAINT**

Plaintiff, ABC International Inc. ("ABC"), by and through its attorneys, Roeser Tanner & Graham LLC, for its Complaint against Defendant, GD Medical Inc. ("GD Medical"), states as follows:

**PARTIES, JURISDICTION & VENUE**

1. ABC is a corporation incorporated in the state of Ohio with its principal place of business in Cleveland, Ohio.

2. GD Medical is a corporation incorporated in the state of Illinois with its principal place of business in Bartlett, Illinois.

3. This Court has subject matter of this case pursuant to 28 U.S.C. § 1332(a), as the parties are citizens of different states and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(1), as the defendant resides in this district.

## ALLEGATIONS AS TO ALL COUNTS

5. On or about February 3, 2020, ABC ordered from GD Medical, and GD Medical agreed to sell to ABC, 215,400 pieces of VetOne surgical face Masks ("Masks") for a total price of \$96,930.00, as detailed on the invoice attached hereto as Exhibit 1.

6. ABC wired \$96,930.00 to GD Medical and fully performed its obligation under the contract.

7. On February 5, 2020, GD Medical delivered 215,400 Masks to ABC's shipping agent at Los Angeles, California. A copy of the shipping document (packing list) is attached hereto as Exhibit 2.

8. ABC's shipping agent accepted the Masks tendered by GD Medical to ABC and stored the Masks pending further delivery to ABC's customer.

9. On February 6, 2020, ABC executed a sales contract ("Contract") with Fujian Zhangzhou Foreign Trade Co., Ltd. ("Fujian") to sell these same Masks. The Contract provided that ABC would sell the 215,400 VetOne Surgical face Masks to Fujian for a total price of \$312,330.00.

10. On February 6, 2020, Fujian wired \$132,000.00 to ABC as a deposit for the Masks.

11. ABC's sales contract with Fujian specifically provided that ABC shall ship the Masks to Fujian no later than February 12, 2020.

12. During the nighttime of February 6, 2020, GD Medical instructed its trucker to go to ABC's shipping agent and retake possession of the Masks that belonged to ABC without ABC's approval.

13. The trucker told ABC's shipping agent that the wrong products were delivered and that he had to retrieve them. Consequently, the trucker picked up the Masks and removed them from the possession of ABC's shipping agent.

14. GD Medical did not deliver the wrong products to ABC.

15. When ABC's president learned that GD Medical had retrieved the Masks, he immediately contacted GD Medical and GD Medical claimed that the Masks were defective and needed to be recalled.

16. Upon information and belief, GD Medical sold the Masks to another buyer at a higher price.

#### COUNT I - BREACH OF CONTRACT

17. Each of the foregoing paragraphs 1 through 16 of this Complaint is incorporated herein by reference as if fully restated herein.

18. GD Medical was, at all relevant times, a "merchant" of these Masks as that term is used in the Illinois Uniform Commercial Code (UCC), Sales, 810 ILCS 5/2-101 *et seq.*

19. ABC and GD Medical entered into a valid contract on February 3, 2020 in which GD Medical agreed to sell to ABC 215,400 VetOne surgical face Masks for a total price of \$96,930.00. *See Exhibit 1.*

20. ABC fully performed its obligation under the contract.

21. GD Medical delivered the Masks on February 5, 2020, as required under the agreement, but then retrieved the Masks on false pretenses one day later. To date, GD Medical has not redelivered any Masks to replace those it retrieved.

22. GD Medical breached the contract by removing the Masks from ABC's shipping agent on February 6, 2020, and by not redelivering replacement Masks.

23. ABC suffered damages as a result of GD Medical's breach. Specifically, ABC was unable to fulfill the Contract to supply these Masks to Fujian.

24. ABC has been unable to find replacement Masks to cover those that were retrieved by GD Medical because of the high demand for Masks as a result of the Coronavirus outbreak. Accordingly, ABC is entitled to all damages provided by the UCC, including lost profits it would have earned from resale of the Masks, pursuant to the U.C.C., 815 ILCS § 2-715(2).

#### **COUNT II - CONVERSION**

25. Each of the foregoing paragraphs 1 through 24 of this Complaint is incorporated herein by reference as if fully restated herein.

26. Once GD Medical delivered the Masks to ABC's shipping agent, ABC had title, custody and control of the Masks.

27. ABC had paid for and accepted delivery of the Masks and has a complete right to the Masks. ABC had an absolute and unconditional right to the immediate possession of the Masks.

28. GD Medical regained custody of the Masks based on the false representations that the Masks were delivered to the wrong party and then that the Masks were defective. Retaking custody of the Masks through false representations was unauthorized and unlawful.

29. GD Medical without authorization wrongfully assumed control of ABC's property and wrongfully deprived ABC possession of its property.

30. ABC contacted GD Medical and demanded immediate return of the Masks.

31. GD Medical admitted it had possession of the Masks, but falsely claimed that the Masks were defective and refused to return the Masks.

32. Upon information and belief, GD Medical sold the Masks to a different company at a higher price.

#### PRAYER FOR RELIEF

Plaintiff ABC International Inc., respectfully prays that this Honorable Court grant the following relief against Defendant:

- A. Award Plaintiff lost profit in the amount of \$215,400.00 and prejudgment interests;
- B. Require GD Medical to disgorge any profits it made from the sale of the Masks to another party; and
- C. Award such other and further relief to Plaintiff as is just and equitable.

#### JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: March 4, 2020

Respectfully submitted,  
**ABC International, Inc.**

By: /s/ Darrell J. Graham  
One of its attorneys

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